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The Torrens Law itself lays down broadly and generally the rule[4] for its own construction—it is to be liberally construed so far as is necessary to effect its general intent. But is this the liberality to which we have been accustomed in other laws relating to land titles? The Supreme Court of North Carolina[5] observed that this law marked so wide a departure from the principle before existing, relating to acquisitions of titles to land or any interest therein, that very little, if any, assistance can be had in determining its proper construction by reference to former statutes and decisions. Recording acts generally are construed liberally in favor of those who have failed to comply with their provisions, and strictly against those who assert a right under such failure. A Torrens Law, on the other hand, is construed strictly against those who fail to comply with its provisions, and liberally in favor of those who assert rights under such failure. And this must necessarily be so if the intent of the act—that everything pertaining to the title must be on the certificate of title—shall be carried out. Its commands and prohibitions must be looked upon as mandatory and not merely directory; and in reaching this result, the court in Application of Seick is in accord with the only two cases in which this point had previously been considered.[6]

The dictum in the Seick case that a tax lien would be good against a subsequent mortgagee in good faith, although no "memorial" appears on the certificate of title, suggests the great importance of looking up tax liens, whether one is dealing with land brought under the Torrens Act or not. Practically, this may be done by reference to the tax ledger, and an additional safeguard is found in the requirement that the existence of delinquent taxes be stamped upon the tax bill. The only opportunity for error lies in the failure of the books or tax bills to show the delinquency as they should. But against this possibility, the Torrens Act by its own express provisions[7] offers no protection.

It is significant that the city attorney of Los Angeles[8] has asked that a man be appointed to devote all his time to looking after the city's interests in relation to Torrens titles, and this perhaps as a result of the very case under review. But be that as it may, Application of Seick throws an interesting sidelight upon the difficulties of practice under the Torrens System, and shows the imperative need of a close scrutiny of and a strict adherence to the provisions of the statute. *L. B. S.*

WILLS: SIGNATURE OF THE WITNESSES AT THE END—Subdivision 1 of section 1276 of the Civil Code of California provides that a will shall "be subscribed at the end thereof by the

[4] § 115, Stats. 1915, p. 1951.
[5] Dillon v. Broeker (1919) 100 S. E. 191 (N. C.).
[6] Dewey v. Kimball (1903) 89 Minn. 454, 95 N. W. 317, 895, 96 N. W. 704; Brooke v. Glos (1909) 243 Ill. 392, 90 N. E. 751.
[7] § 34, Stats. 1915, p. 1939.
[8] San Francisco Recorder, Mar. 31, 1920.

testator"; subdivision 4 of the same section commands that the witnesses shall sign "at the end of the will . . . ." Does the expression "at the end" mean the same in both cases? There is a dictum in the Estate of Dutcher[1] answering the question affirmatively, though there is no decision under the California statute precisely in point. Elsewhere dicta found in cases construing similar statutes agree with the view expounded in the Dutcher case.[2]

The problem is suggested by the facts in *Estate of Moro*,[3] though not mentioned in the opinion in that case, nor necessarily involved. In Moro's will the testator himself subscribed the instrument at the end, but the witnesses, who might have signed on the same page, where there was ample room for the purpose, wrote their signatures on the following page. The court held that this was a signing by the witnesses at the end, a result which seems satisfactory.

In arriving at this conclusion the court in effect adopts the view of the concurring judges in the Estate of Seaman,[4] which gave more weight to the apparent purpose and intent of the testator than did the majority opinion in that case. The latter opinion emphasized the element of form by requiring physical proximity of the subscription of the testator to the dispositive words of the will.

One may express gratification in noting the tendency of the court to construe the statute of wills liberally in a case where it is difficult to see how serious mischief could result from a liberal construction, as under the facts present in the Moro case. But does the rule of the principal case with respect to the definition of "the end of the will" for the purpose of the signature of the witnesses apply with equal satisfaction when the subscription of the testator is involved?

A principal object of the requirement that the testator subscribe at the end was to prevent the possibility of fraudulent interpolations between the end of the disposing words and his subscription.[5] A rule of construction which would permit the signature of the testator to appear on a separate page from the body of the will is fraught with grave possibilities for fraud. It might even be possible, for example, that an entirely different instrument could be substituted for the one before the testator when he thus writes his name on the blank sheet. On the other hand, it is difficult to perceive any reasonable opportunity for fraud in connection with the position of the signatures of the

[1] (1916) 172 Cal. 488, 157 Pac. 242.

[2] McGuire v. Kerr (1853) 2 Bradf. Surr. (N. Y.) 244; Matter of Hewitt (1883) 91 N. Y. 263.

[3] (June 1, 1920) 59 Cal. Dec. 571.

[4] (1905) 146 Cal. 455, 80 Pac. 700, 106 Am. St. Rep. 53.

[5] In re Andrews (1900) 162 N. Y. 1, 56 N. E. 529, 76 Am. St. Rep. 294, 48 L. R. A. 662; In re Conway (1891) 124 N. Y. 455, 26 N. E. 1028, 11 L. R. A. 796.

witnesses. Apparently this part of subdivision 4 of section 1276 is a merely formal requirement without substantial justification in the execution of testamentary dispositions. It seems to be form for the sake of form, not like the provision in regard to the position of the testator's signature, an additional guaranty of the will. It might well be omitted from the statute. The very carefully drafted English Statute of Victoria[6] on the subject of wills, prepared by some of the ablest property lawyers in the history of the English bar, which serves as the model of the California statute, does not require that the witnesses subscribe at the end,[7] though it does demand that the testator do so.

Notwithstanding the expressions of judicial opinion that the phrase "end of the will" should be identically construed with reference to the subscription of the testator and the signature of the witnesses, an interpretation which takes account of the policy and purposes of the language in each case might well reach the conclusion that the same words are to be differently construed in the two subdivisions of the statute, that is, more strictly in the case of the testator's subscription than in the case of the witnesses' signature. *I. A. C.*

Book Reviews

PRINCIPLES OF THE LAW OF CONTRACT. By Sir William R. Anson. 14th English edition, 3rd American edition by Arthur L. Corbin, Yale University School of Law. Oxford University Press, 1919. pp. 568.

When a work runs through fourteen editions in forty years one may say that it has merit. Anson's treatise indeed has attained to that degree of acceptance which makes it a British institution, yet it reflects even now little or none of the thinking which is today recasting ideas in the science of the law.

The present text interests because it is an American edition and from the hand of an able worker in the task of putting the Anglo-American law upon a philosophical foundation. That the law is one—its basis the clash of human interests adjusted by contemporary society—is obscured by the teaching necessity of chopping the fabric into "courses"—a phase of the prevailing small-package habit in education—by increasing specialization in the profession and by the submerging flood of case-reports. Toward bringing it back to unifying principles the late Mr. Hohfeld of

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[6] (1837) 1 Victoria, ch. 26.

[7] The provisions of the English Act requiring the witnesses to subscribe is satisfied when the witness who saw it executed by the testator, immediately signed their names on any part of it at his request with the intention of attesting it. I Williams on Executions, p. 137. See also In the Goods of Streatley [1891] P. 172.